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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Part 2409

[Docket No FR-5571-F-03]

RIN 2501-AD56

HUD Acquisition Regulations (HUDAR): Correcting Amendment

AGENCY: Office of the Chief Procurement Officer, HUD.

ACTION: Final rule; correcting amendment.

SUMMARY: On December 10, 2012, HUD published a final rule that amended the HUDAR to implement miscellaneous changes, which included, for example, removing obsolete and redundant provisions, updating provisions that address the organizational structure of HUD, and adding provisions on contractor record retention. In making the organizational changes specified in the preamble of the December 10, 2012, final rule and the March 16, 2012, proposed rule, HUD inadvertently omitted moving to the new regulatory structure the clause that clarifies that policies and procedures concerning debarment and suspension for nonprocurement contracts also apply to procurement contracts. This final rule corrects that amendment.

DATES: Effective: [Insert date of publication in the Federal Register], and is applicable beginning January 9, 2013.

FOR FURTHER INFORMATION CONTACT: For information about this technical correction, please contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; telephone number 202-708-1793 (this is not a toll-free

number). Persons with hearing or speech impairments may access Mr. Blocker's telephone number via TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The uniform regulation for the procurement of supplies and services by federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696). The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 121(c)); and the general authorization in FAR 1.301.

II. 2012 HUD Amendments

HUDAR was last revised by final rule published on December 10, 2012 (77 FR 73524). The December 10, 2012, final rule was preceded by a March 16, 2012 (77 FR 15681), proposed rule that announced that the purpose of the 2012 rulemaking was to implement various miscellaneous and nonsubstantive amendments to the HUDAR. The preamble to the March 16, 2012, proposed rule described amendments that would correct the location of various HUDAR provisions through redesignation and corrected citations.

One of the amendments described in the March 16, 2012, proposed rule was to move 48 CFR 2409.7001 to its new location, 48 CFR 2409.470. Section 2409.7001, entitled "HUD's Regulations on Debarment and Suspension, and Ineligibility", read as follows: "HUD's policies and procedures concerning debarment and suspension are contained in 2 CFR parts 180 and 2424

and, notwithstanding 2 CFR 180.220(a)(1), apply to procurement contracts.” The preamble to the March 16, 2012, proposed rule stated that: “The content of current 2409.7001 is proposed to be moved to the new 2409.470 with the same title, to more accurately correspond to the FAR and would be revised to correct the Code of Federal Regulations citation. Current subpart 2409.70 would be accordingly removed, as 2409.7001 was the only section in that subpart.” (See 77 FR 15683.) The correction of the citation was to remove the references to 2 CFR part 180, which is now unnecessary as it is included by cross-reference in 2 CFR 2424.10 and elsewhere. Other than relocation and correction of the citation, no substantive change was proposed to section 2409.7001. However, in the published rule text, the portion after the legal citation to 2 CFR part 2424 was inadvertently dropped.

The preamble to the December 10, 2012, final rule advised that it was implementing without change the amendments proposed by the March 16, 2012, rule, and described a few nonsubstantive amendments made that were inadvertently omitted in the March 16, 2012, proposed rule. Unfortunately, the March 16, 2012 proposed rule also inadvertently omitted the full content of prior regulatory section 2409.7001 that was supposed to be moved, without substantive change, to 2409.470, and the December 10, 2012 final rule repeated that error.

III. This Correcting Amendment Rule

This final rule corrects this error and restores the full content of § 2409.7001 to new § 2409.470 with a corrected legal citation. The 2012 rulemaking makes clear that no significant substantive changes were being made to the HUDAR. The error did not change the applicability of debarment and suspension rules to procurements. To remove the applicability of HUD’s debarment and suspension policies and procedures to procurement contracts, which policies and procedures have been applied to procurement contracts to date and for many years previously,

would have made the 2012 rulemaking a highly significant rule, and HUD would have been required to provide advance notice and solicit comment on this change. Additionally, however, and of equal or more importance is that HUD has no authority to exempt procurement contracts from debarment and suspension policies and procedures. The Federal Acquisition Regulation (FAR) requires debarment and suspension policies and procedures to be applied to procurement contracts. In the absence of an agency specifying its own debarment and suspension policies and procedures, those of the FAR apply. (See 48 CFR 1.1 and 48 CFR part 9, subpart 9.4). The language in HUD's HUDAR regulations previously in 48 CFR 2409.7001 has always only been a clarification that HUD's debarment and suspension policies and procedures apply both to procurement and nonprocurement contracts. Indeed, HUD's 2007 debarment and suspension rule noted that § 2409.7001 did not impose any additional requirements but was a regulatory clarification of longstanding HUD policy of many years (72 FR 61270, October 29, 2007).

List of Subjects

48 CFR Part 2409

Government procurement.

Accordingly, for the reasons described in the preamble, 48 CFR part 2409 is amended as follows:

PART 2409 — CONTRACTOR QUALIFICATIONS

1. The authority citation for part 2409 continues to read as follows:

Authority: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

2. Revise § 2409.470 to read as follows:

§ 2409.470 HUD regulations on debarment, suspension, and ineligibility.

HUD's policies and procedures concerning debarment and suspension are contained in 2 CFR part 2424, and, notwithstanding any language to the contrary, apply to procurement contracts.

Dated: August 9, 2013

Jemine A. Bryon
Chief Procurement Officer

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